

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**DAVID E. HUESTON,**

Petitioner,

v.

**CIV. ACT. NO. 5:24-CV-81**  
Judge Bailey

**R. BROWN**, Warden, FCI Gilmer,  
and **DR. McCOY**, FCI Gilmer, "Care  
Provider",

Respondents.

**ORDER**

The above-referenced case is before this Court upon the magistrate judge's recommendations that the petition [Doc. 1] filed by Petitioner David E. Hueston be denied and dismissed without prejudice to the petitioner's right to file his claims in a civil rights action and that the pending Motion for Leave to Proceed *in forma pauperis* [Doc. 2] be denied as moot.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. **Thomas v. Arn**, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. **United States v. Schronce**, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No

objections have been filed to the magistrate judge's report and recommendation.


A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation [Doc. 6] is **ADOPTED** and the petition [Doc. 1] is **DENIED** and **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to file his claims in a civil rights action. Further, the petitioner's Motion for Leave to Proceed *in forma pauperis* [Doc. 2] is **DENIED AS MOOT**.

The Clerk is **DIRECTED TO STRIKE** the above-styled case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to *pro se* petitioner.

**DATED:** June 5, 2024.

  
**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**